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UNITED STATES BANKRUPTCY COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SANTA ROSA DIVISION

In re:

JOHN FREDERICK DIXON,

Debtor.

CASE NO. 09-11851

Chapter 11

Date: October 2, 2009  
 Time: 10:00 a.m.  
 Place: Courtroom of the Honorable  
 Alan Jaroslovsky  
 99 South E Street  
 Santa Rosa, California

**OBJECTION BY ORIX CAPITAL MARKETS, LLC TO  
CLAIMS OF EXEMPTION OF DEBTOR**

**INTRODUCTION**

ORIX Capital Markets, LLC ("ORIX"), by and through its counsel, hereby files  
 Objection to Claims of Exemption of Debtor John Frederick Dixon ("Debtor") on the basis that  
 Debtor has filed its Schedule C-Property Claimed As Exempt claiming an exemption in IRA  
 Accounts (as defined below) with total aggregate values in excess of \$1,160,000 utilizing  
 Bankruptcy Code exemptions instead of California state law exemptions as required. As a result,  
 the exemptions claimed by Debtor in the IRA Accounts must be denied or Debtor must be required to

to file an Amended Schedule C.

### STATEMENT OF FACTS

On June 19, 2009, Debtor filed his Chapter 11 Voluntary Petition commencing above-referenced bankruptcy case ("Bankruptcy Case").

Thereafter, on June 26, 2009, Debtor filed in his Bankruptcy Case, inter alia, his Schedule C-Property Claimed as Exempt ("Schedule C"), a true and correct copy of which is attached hereto as Exhibit 1. Pursuant to the Schedule C, Debtor claimed exemptions in an IR Rollover Account #2873-2979 with Charles Schwab & Co. and IRA Account #005331770002 FiServe Investment Services (collectively, the "IRA Accounts") in the amounts of \$1,093,490 \$23,885, respectively.

In support of his claims of exemption in the IRA Accounts, Debtor cites 11 U.S. Section 522 (b)(3)(C). On July 31, 2009, Debtor's 341 Meeting was held and concluded. Thus, the deadline for ORIX to file an objection to Debtor's claims of exemption pursuant to 11 U.S.C. Section 522 is August 31, 2009.

As a result, ORIX files this objection to preserve its rights pursuant to 11 U.S.C. Section 522 (l).

### ARGUMENT

As set forth above, Debtor cites 11 U.S.C. Section 522 (b)(3)(C) as the statutory basis for claiming an exemption in the IRA Accounts and incorporating the Bankruptcy Code exemptions. However, "[o]nly the California exemptions--not the Bankruptcy Code exemptions--apply to individual California debtors" and a Debtor must cite the applicable California Code of Civil Procedure section in support of each claimed exemption (i.e. CCP 70 & 704.010-704.730). March, Ahart, & Tchaikovsky, California Practice Guide: Bankruptcy (R Group 2007) ¶5:751.

Specifically, California Code of Civil Procedure Section 703.130, provides, as follows:

Pursuant to the authority of paragraph (1) of subsection (b) of Section 522 of Title 11 of the United States Code, the exemptions set forth in

subsection (d) of Section 522 of Title 11 of the United States Code (Bankruptcy) **are not authorized in this state.** (Emphasis added). Cal. Code Civil Proc. § 703.130.

Moreover, "all individual debtors filing bankruptcy in California must check the box adjacent to the reference to 11 USC § 522(b)(2) on Schedule C". March, Ahart, & Tchaikovsky, California Practice Guide: Bankruptcy (Rutter Group 2007) ¶5:751.

Here, Debtor did not check the box adjacent to the reference to 11 U.S.C. Section 522 (b) (2) on Schedule C as required, but rather checked the box adjacent to the reference of 11 U.S.C. Section 522 (b)(3). In addition, Debtor cited a Bankruptcy Code exemption provision in support of the claimed exemptions for the IRA Accounts and did not cite the requisite applicable California exemption. As a result, ORIX and other creditors are left to guess which California exemption provision applies, if any, and whether the claimed exemptions in the IRA Accounts are valid. Debtor has not complied with the Bankruptcy Code and the California Code of Civil Procedure and its claimed exemptions in the IRA Accounts must be denied or Debtor must be required to file an Amended Schedule C that complies.

### CONCLUSION

Based on the foregoing, either the Debtor's claimed exemptions for the IRA Accounts must be denied, or in the alternative, Debtor must be required to file an Amended Schedule C that complies with requirements of the Bankruptcy Code and the California Code of Civil Procedure.

DATED: August 28, 2009

JEFFER, MANGELS, BUTLER & MARMARO  
ROBERT B. KAPLAN  
WALTER W. GOULDSBURY III

By: /s/ Walter W. Gouldsbury III  
WALTER W. GOULDSBURY III  
Attorneys for Creditor ORIX CAPITAL MARKETS  
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## EXHIBIT A

In re John Frederick DixonCase No. 09-11851

Debtor

**SCHEDULE C - PROPERTY CLAIMED AS EXEMPT**Debtor claims the exemptions to which debtor is entitled under:  
(Check one box)☐ 11 U.S.C. §522(b)(2)☒ 11 U.S.C. §522(b)(3)☒ Check if debtor claims a homestead exemption that exceeds \$136,875.

Description of Property	Specify Law Providing Each Exemption	Value of Claimed Exemption	Current Value of Property Without Deducting Exemption
<b><u>Real Property</u></b>			
<b><u>Residence</u></b> 300 Palm Avenue Kentfield, CA	C.C.P. § 704.730	150,000.00	1,750,00
<b><u>Household Goods and Furnishings</u></b>			
Miscellaneous goods and furnishings located at 300 Palm Avenue Kentfield, California	C.C.P. § 704.020	2,500.00	2,50
<b><u>Wearing Apparel</u></b>			
Miscellaneous clothing	C.C.P. § 704.020	1,500.00	1,50
<b><u>Interests in Insurance Policies</u></b>			
United of Omaha Life Insurance #BU1225080 (value of \$21,134 on 5/28/2010)	C.C.P. § 704.100	21,134.00	21,13
<b><u>Interests in IRA, ERISA, Keogh, or Other Pension or Profit Sharing Plans</u></b>			
IRA Rollover Account #2873-2979 Charles Schwab & Co. 101 Montgomery Street San Francisco, CA 94104	11 U.S.C. § 522(b)(3)(C)	1,093,490.00	1,131,71
IRA Account #005331770002 FiServe Investment Services 717 17th Street, Suite 1700 Denver, CO 80217	11 U.S.C. § 522(b)(3)(C)	23,885.00	32,52
<b><u>Other Liquidated Debts Owning Debtor Including Tax Refund</u></b>			
Monthly social security \$1,865/mo. (Not property of the estate)	42 U.S.C.A. § 407 Not property of the estate	1,865.00	Unkn
<b><u>Automobiles, Trucks, Trailers, and Other Vehicles</u></b>			
2003 Acura 3.2CL	C.C.P. § 704.010	2,550.00	8,86
<b><u>Office Equipment, Furnishings and Supplies</u></b>			
Gateway FX530XG computer and fax/printer purchased in 2007 located at 300 Palm Avenue, Kentfield, CA	C.C.P. § 704.060	250.00	25
Dell Latitude X200 Computer purchased in 2002 and located at 300 Palm Avenue, Kentfield, California	C.C.P. § 704.060	50.00	5

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Debtor

### SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

(Continuation Sheet)

Description of Property	Specify Law Providing Each Exemption	Value of Claimed Exemption	Current Value of Property Without Deducting Exempt
Dell XPS410 computer and HP Laserjet 1520 printer purchased in 2007, Fujitsu scanner purchased in 2004, Canon B740 fax purchased in 2003, Konica 3135 photocopier purchased in 1995, typewriter, desk and 3 chairs, 3 file cabinets, credenza and 2 bookshelves all located at 851 Irwin Street, Suite 302, San Rafael, CA	C.C.P. § 704.060	3,500.00	3,500.00

Total: **1,300,724.00** **2,952,043**

Sheet 1 of 1 continuation sheets attached to the Schedule of Property Claimed as Exempt